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Mayor

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Land Use Action Date:	December 15, 2009
Board of Aldermen Action Date:	December 21, 2009
90-Day Expiration Date:	January 19, 2010

DATE: October 16, 2009

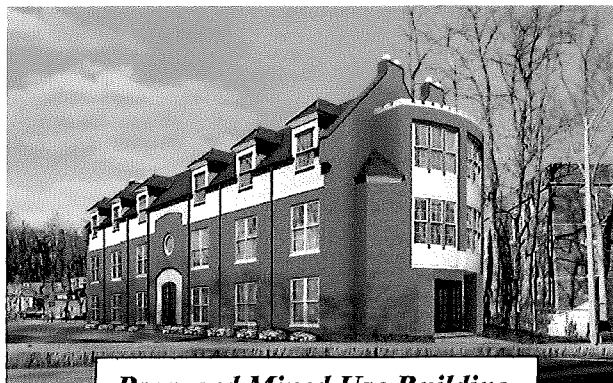
TO: Board of Aldermen

FROM: Michael Kruse, Director of Planning and Development
Candace Havens, Chief Planner *CH*
Alexandra Ananth, Senior Planner

SUBJECT: Petition # **272-09**, HERRICK ROAD REALTY TRUST for a SPECIAL PERMIT/SITE PLAN APPROVAL to erect at 39 HERRICK ROAD, Ward 6, NEWTON CENTRE (Lot 7) a 3-story mixed-use building containing 4 dwelling units and ground floor commercial space with a 75-seat restaurant, with underground parking and associated parking waivers (allow 1¼ parking spaces per housing unit; allow off-street parking facilities to be located on a separate lot; waive 9 parking spaces; waive 3 bicycle parking spaces; allow frontage to be measured along a public footway) and to construct a retaining wall greater than 4 feet within the rear/side setbacks and waive 18 existing parking spaces on Lot 7 Herrick Road, on land known as Sec 61, Blk 35, Lots 6 and 7, in a district zoned BUSINESS 1.

CC: Mayor David B. Cohen

The purpose of this memorandum is to provide the Board of Aldermen and the public with technical information and planning analysis which may be useful in the special permit decision making process of the Board of Aldermen. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information presented at or after the public hearing that the Land Use Committee of the Board of Aldermen will want to consider in its discussion at a subsequent Working Session.



Proposed Mixed Use Building

EXECUTIVE SUMMARY



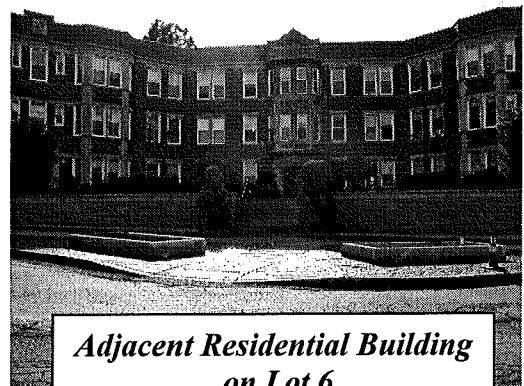
The subject property consists of an 11,638 sq. ft. site (Lot 7) currently improved with a surface parking lot used by the tenants of the adjacent apartment building (Lot 6), which is in common ownership with the subject property. The petitioners wish to erect a new three-story, mixed-use building with a 75-seat restaurant on the first floor and four residential units above. A below-grade parking garage containing 20 stalls as well as five surface stalls behind the proposed building are proposed to serve these uses. The petitioners will need to

seek a waiver of nine parking stalls for the proposed use. In addition, the petitioners will need to seek a waiver for the removal of 18 parking spaces that are now available on Lot 7 for use by residents of Lot 6.

Restaurants with more than 50 seats are allowed in the Business 1 (BU-1) District by special permit. Multi-family dwellings are also allowed in the BU-1 zone by special permit. ***The subject property has insufficient frontage along Herrick Road and is proposing to meet the frontage requirement using the public footway adjacent to the MBTA tracks, which is also allowed with a special permit. However, a variance from the Zoning Board of Appeals is required to allow the building in its proposed location adjacent to a public footpath.***

The Planning Department is supportive of this type of mixed-use development in Newton Centre. However, access to and circulation on the site are challenging and the petitioners must seek a number of easements in order for this project to work. The driveways leading to the surface and garage parking lots are partially on adjoining lots, which will require easements and special permits.

The proposed driveway leading to the underground parking garage traverses under City-owned property (*land now occupied by the Health and Human Services Department at 1294 Centre Street*) and, should the Committee wish to recommend approval of this proposal, ***an underground easement must be obtained from the City*** prior to issuance of any building permits. Although the Real Property Reuse Committee held a public hearing on this subject, including Docket Items #71-09 and #71-09(2), on March 24, 2009, and the full Board of Aldermen voted to accept the Committee's recommendation on April 6, 2009, Planning Department staff has not followed-up on the Board's action and request to obtain an opinion of value from one of the MAI appraisers used by the City of Newton, pending the



***Adjacent Residential Building
on Lot 6***

Board's further action on this petition. ***Please Note: Section 2-7(4) states that the Board of Aldermen shall submit its recommendations by resolution to the Mayor for the disposition and future use of the subject real property, and may authorize the use of the subject real property, and may authorize the Mayor to sell or lease the subject real property and set the minimum financial terms for such sale or lease.***

The development of a mixed-use commercial/residential building in this location is consistent with the 2007 *Newton Comprehensive Plan*, which encourages the vitality of village centers by offering services to nearby neighborhoods, provided the petitioners are able to protect the quality of life in those neighborhoods. Locating residences adjacent to public transit also models the smart growth principles represented in *The Plan*.

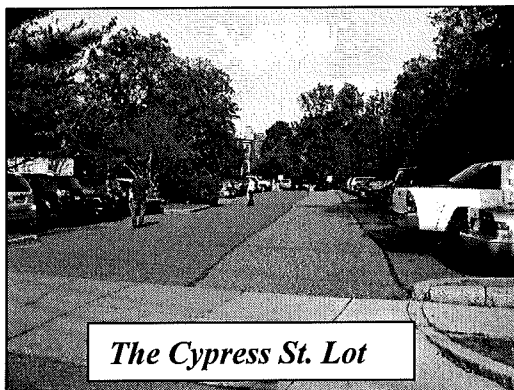
I. SIGNIFICANT ISSUES FOR CONSIDERATION

When considering this request, the Board should determine if the following findings apply:

- The proposed structure including height, number of stories, reduced front setback, and frontage along the public footway will not be more detrimental to the surrounding area and neighborhood than the existing parking facility or to the pedestrian experience of those traveling on the footpath.
- The proposed mixed-use development, including four residential units and a restaurant with more than 50 seats will positively affect Newton Centre by increasing the vitality of the commercial district.
- The granting of waivers from the parking requirements, including a reduction in the number of spaces to be provided, bicycle parking requirements, and the allowance of off-street parking facilities to be located on a separate lot will not have adverse affects on parking, traffic, and circulation in the Newton Centre commercial district or adjacent residential streets.
- The construction of retaining walls in the rear and side setbacks of Lot 6 will not adversely affect immediate abutters.
- The waiver of 18 parking spaces located on Lot 7 and associated with the use on Lot 6 will not have adverse affects on residents of the apartment building on Lot 6 or on parking, traffic, and circulation in the Newton Centre commercial district or adjacent residential streets.

II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Neighborhood and Zoning



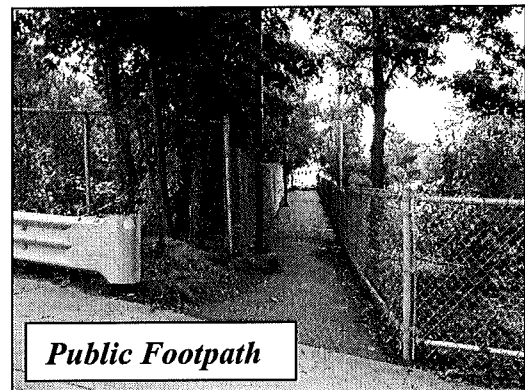
The subject property is located on the west side of Herrick Road just past the intersection of Union Street. The property has frontage on Herrick Road. The block is bounded by Centre Street, Cypress Street, Beacon Street, and Braeland Avenue. It is zoned BU-1, like the properties on nearby Union Street. There

is a 10'-wide public footpath beside the MBTA tracks on its southerly side. Other uses on the block include a municipal parking lot, a multi-tenant commercial building, which houses a toy store and math school with associated parking, the Newton Health Department, and another multi-tenant commercial building with Rosenfeld's Bagel Shop and various other commercial tenants. The adjacent building to the north contains 29 residential units and a laser hair removal office. There also are residences opposite the train tracks on Braeland Avenue and up Herrick Road.

The abutting municipal parking lot, known as the Cypress Street Lot contains 57 metered parking spaces (38 12-hour and 19 three-hour spaces). The lot is used primarily by commuters who park and ride the MBTA Greenline from the Newton Centre train stop on Union Street, especially on weekdays.

B. Site

The subject property (Lot 7) is currently improved with a paved area for parking 18 cars. The subject property is under common ownership with the adjacent 29-unit residential building (Lot 6); however, there is no on-site parking provided for residents of Lot 6, so many of the residents of the apartments currently park on Lot 7. The owner of these lots has a license agreement with the City to allow access to the existing parking spaces through the Cypress Street parking lot.



The 11,638 sq. ft. site is adjacent to a public footpath. The City of Newton acquired this 1,342 sq. ft. footpath from Lot 7 by eminent domain in 1951 through Board Order #99149. However, the petitioners claim this taking resulted in an easement and has included the area as part of the subject property and the setback to the south is based on this assumption. ***According to City Engineering Division records, this land was taken for municipal purposes in 1950 and further documented in a 1951 Board Order. Consequently, the petitioners must seek approval of a variance from the ZBA or move the building back ten feet to comply with the City's Zoning Ordinance (setback) requirements.***

III. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

Four two-bedroom residential units are proposed on the second and third floors of this building. The petitioners have not submitted any information on the proposed restaurant use, but have stated that they are targeting a fine dining establishment with peak hours in the evening and they expect to offer valet parking at an off-site location, which has not been disclosed to date.

B. Building and Site Design

The proposed building is a three-story brick and stucco structure. The property has limited frontage on Herrick Road and, as such, the proposed building is oriented towards the MBTA tracks and footpath. There is a lobby in the middle of the building facing the footpath, which will presumably be the main “ceremonial” entrance to the restaurant. There is also a set of doors facing Herrick Road and one at the opposite end facing the municipal parking lot. Additionally, there are entrances from two separate staircases at the rear of the building that lead to the residential units.

The building relates well to the surrounding context of two- and three-story brick buildings. It has a parapet echoing an historic design with pairs of double-hung windows with four panes over four on most of the facades. An oculus above the ceremonial entrance accents the elliptically-shaped building. The size of the building fits well on the site and its visual impact will be minimized by the topography, vegetation, and nearby structures.

The proposed ground floor restaurant space is 2,890 sq. ft.; no outdoor seating is proposed. The four residences all are two-bedroom units of 1,379 sq. ft. on the second and third stories. The residential units appear to be accessible by an elevator from the basement level garage, as well as from two separate staircases from the surface parking area.

There is a 20-stall parking garage proposed below the building. The footprint of the garage is significantly larger than the building footprint and takes up most of the site. The garage is accessed from a long driveway that runs from Herrick Road (as it approaches Union Street) along the northwesterly side of the adjacent residential building on Lot 7, across a corner of City-owned property (*land now occupied by the Health and Human Services Department at 1294 Centre Street*) and onto the subject property. There is an existing brick power plant building in the southwest corner of Lot 6 that is not shown on plans. ***Prior to the Working Session, the petitioners should clarify what will happen with this building, once the petition is approved.***

Aerial View of Proposed Site Plan



C. Parking and Circulation

The petitioners propose 1¼ parking stalls per residential unit (*total of five spaces and less than the eight spaces required by the City's Zoning Ordinance*) and 29 parking stalls, as required by the City's Zoning Ordinance for the proposed restaurant (combined total of 34 spaces). Since 25 of the required 34 parking stalls are proposed to be provided on-site (20-stall parking garage and five at-grade spaces), the petitioners request a waiver of the remaining nine stalls. ***In addition, the petitioners***

request a waiver for removal of the 18 parking spaces that are now available to residents of Lot 6; once parking has been provided (as has been done since 1998 on the subject property for residents of Lot 6), it cannot be removed without zoning relief. However, the petitioners stated that only nine parking stalls are currently used by tenants of the adjacent building and that these nine tenants may park in the below-grade garage, should the Board approve this project. As these tenants move out, the owners of the adjacent property will lease the residential units without parking, freeing up spaces for the new uses on Lot 7.

The proposed site plan shows two separate parking areas: a surface parking area with five parking spaces and a below-grade garage with parking for 20 cars. The 20-stall parking garage would be for residents of the new building, residents of Lot 6 who currently park on Lot 7 (*as mentioned above*), and employees of the restaurant. It is designed to align with a possible future below-grade garage on the Cypress Street municipal lot, should that site ever be redeveloped. Access is very narrow at some points in the proposed driveway and there is a pinch point of 13.6' where 20 feet is required; a small passing area is provided, should two cars meet in the driveway. Since the garage is proposed for residents and employees who will not move in and out of the facility often, the potential for conflicts will be reduced but is still problematic. The Associate City Engineer recommends a traffic signal be installed at this pinch point to control the flow of traffic entering and exiting the underground garage. The Planning Department notes that circulation in the garage is also quite tight. ***Planning Department staff requests the petitioners provide a turning template plan to demonstrate how vehicles will safely move in and out of the parking spaces in the garage.***

The surface parking area would be for restaurant patrons. Cars would enter the site via a one-way driveway off of Herrick Road (as it heads uphill towards Braeland Avenue) and exit through the Cypress Street municipal lot. The petitioners submitted a parking lot survey prepared by Design Consultants, Inc., which indicates that there is capacity in the Cypress lot during typical evening peak restaurant hours. However, valet parking would further assure that parking needs are met for this future use and the petitioners are pursuing options for providing this service to patrons. Given that the bike racks at the Newton Centre T-shop nearby are well-used, the Planning Department believes the petitioners should seek to locate a bike rack on-site rather than request a waiver from this requirement.

As proposed, it appears that the installation of a new driveway off of Herrick Road will likely result in the loss of one metered parking space on this street. The petitioners should explore the idea of shifting the meters to maintain the same number of meters and avoid the loss of public parking and associated revenue for the City, which is estimated at \$1,000 a year. If the meter cannot be relocated the petitioners will be expected to petition Traffic Council for the removal of this meter. In addition, there is a crosswalk and a street light very close to the proposed driveway location and ***the petitioners should ensure that the proposed driveway does not interfere with them. The petitioners also should clarify how emergency vehicles will service the site.***

The Planning Department notes that the petitioners have not designated a location for a dumpster or explained how trash, deliveries, and snow storage will be handled. ***The petitioners should be expected to provide this information at the public hearing.***

Once again, the Planning Department notes that other communities have initiated programs in which petitioners make payments-in-lieu of providing parking stalls. In-lieu payments may be used toward reducing parking demand or improving existing parking conditions. Planning Department staff is currently drafting an ordinance that would require payments-in-lieu of providing any required parking that cannot be accommodated on-site. The Planning Director expects to docket such an item in near future.

D. Landscape Screening, Lighting, Signage, and Grading

The petitioners submitted a landscape plan showing a row of nine white pine trees screening the parking area on Lot 7 from the residential building on Lot 6. The petitioners are proposing a birch tree at the entrance from Herrick Road as well as some dwarf spruce trees, rhododendrons, and roses. Two planters, each with an arborvitae will anchor the ceremonial entrance from the footpath and yews will screen the surface parking from the building occupied by the Health Department. The landscape plan appears sufficient for proper screening and a low-maintenance yet attractive look. In addition, ***Planning Department staff recommends the petitioners consider landscape improvements to the public footpath as a potential public benefit to this project and as an additional way to improve the appearance of the site and immediate area.*** If any trees are proposed for removal, the petitioners are expected to submit a plan, to the City's Tree Warden and Planning Department, showing caliper inches to be removed prior to a scheduled Working Session.

In order to construct the access driveway to the below-grade garage, an eight-foot retaining wall is proposed in the rear and side setbacks of Lot 6. This will require a special permit from the Board. Any safety fencing along the rear lot line above the driveway entrance to the garage also should be shown on plans. Details for the wall should be submitted to the Planning Department and City Engineer.

The petitioners did not submit any information on proposed lighting or signage.

IV. COMPREHENSIVE PLAN

The November 2007 *Newton Comprehensive Plan* encourages enhancing village centers and their vitality by providing services and amenities to nearby neighborhoods, while protecting the qualities of those neighborhoods. In addition, it supports fostering viable businesses to enhance the commercial real estate tax and employment bases. Finally, this mixed-use adjacent to public transit supports to principles of transit-oriented development and a more urban lifestyle fitting this location where the need for on-site parking should be reduced. The sharing of parking spaces at different times of day by different users also is encouraged by the *Comprehensive Plan's* Transportation and Mobility section.

V. TECHNICAL REVIEW

- A. Technical Considerations (Section 30-15). The Zoning Review Memorandum, dated September 11, 2009 (*ATTACHMENT A*), provides an analysis of the project with regards to the City's Zoning Ordinance. The petitioners must seek waivers for the proposed building (height, number of stories, reduced setback requirement), for the use, for parking, and to measure frontage along the public footway. Approvals also are needed for a retaining wall over four feet in height in the side and rear setbacks and to waive existing parking spaces on Lot 7, but associated with the use on Lot 6. The petitioners must also seek a variance for the front setback from the ZBA.
- B. Parking Requirements (Section 30-19). The Zoning Review Memorandum provides an analysis of the proposal with regard to Section 30-19. The petitioners are seeking to reduce the number of parking stalls per housing unit, to waive nine required parking spaces for the proposed use, and to allow off-street parking facilities to be located on a separate lot. The petitioners also request a waiver of three required bicycle parking spaces. The petitioners must also waive 18 existing parking spaces located on Lot 7, but associated with the use on Lot 6.
- C. Other Reviews
 1. Engineering Division. The Associate City Engineer notes that the petitioners will need to submit revised plans due to the recent reconstruction of Herrick Road (*ATTACHMENT B*).
 2. Fire Department. The Assistant Chief of Operations has not yet submitted a review to the Planning Department, but is expected to do so prior to the Public Hearing.
 3. Traffic. Transportation Planning Coordinator David Koses and Transportation Engineer Jim Danila have reviewed the submitted plans and contributed to the Parking and Circulation section of this report.
 4. Urban Design Commission. The petitioners will be required to submit plans for any proposed signage to the Urban Design Commission and obtain sign permit(s) prior to installation of signs.
 5. Inclusionary Zoning Provision. The proposed development is subject to the Inclusionary Zoning provision of Section 30-24(f). The petitioners have indicated that they will opt to make the required payment.
 6. Financial Impacts. If a City parking meter is eliminated, the loss of City revenue is estimated at around \$1000 per year. Traffic Council must also approve the removal of any parking meters.

VI. ZONING RELIEFS SOUGHT

The petitioners are seeking approval through or relief from:

- Section 30-5(b)(4), Ordinance Z-45, to allow for a retaining wall greater than four feet in height in the rear and side setback;

- Section 30-15, Table 3, 30-15(b)(2), to allow the height of the building to exceed 24 feet, to allow for a three-story building, to reduce the front setback requirement, and to allow frontage to be measured along the public footway;
- Section 30-11(d)(8) & (9), to allow a restaurant with more than 50 seats in the BU-1 zone and to allow a multi-family dwelling in the BU-1 zone;
- Section 30-19(d), (d)(2), 30-19 (f)(1) & (2), 30-19(k), & 30-19(m), to allow 1¼ parking spaces per housing unit, to waive the requirement for nine parking spaces on Lot 7, to waive the requirement for three bicycle parking spaces, to allow off-street parking facilities to be located on a separate lot, and to waive 18 existing parking spaces located on Lot 7, but associated with the use on Lot 6;
- Section 30-23, for site plan approval; and
- Section 30-24, for approval of special permits.

VII. SUMMARY OF PETITIONERS' RESPONSIBILITIES

Prior to scheduling for a Working Session, Planning Department staff recommends the petitioners:

- verify the status and ownership of the public footpath;
- submit additional information on proposed off-site parking and valet operations for restaurant patrons;
- clarify the disposition of the brick storage building on the southwest corner of Lot 6;
- show how vehicles will circulate safely within the parking structure;
- show the existing crosswalk and street light on plans to verify they do not conflict with the proposed driveway location;
- clarify how emergency vehicles will service the site;
- indicate trash, deliveries, and snow storage will be managed;
- revise plans to accurately reflect recent changes resulting from reconstruction of Herrick Road;
- submit to the Tree Warden and the Planning and Development Department a tree removal plan showing caliper inches to be removed.

ATTACHMENTS

ATTACHMENT A: *Zoning Review Memorandum, dated September 11, 2009*

ATTACHMENT B: *Engineering Division Memorandum, dated October 15, 2009*

ATTACHMENT C: *Memorandum, dated October 13, 2009, from David Ivany, P.E., of Design Consultants, Inc.*


ATTACHMENT D: *Land Use Map*

ATTACHMENT E: *Zoning Map*

Zoning Review Memorandum

Dt: September 11, 2009

To: John Lojek, Commissioner of Inspectional Services

Fr: Eve Tapper, Chief Zoning Code Official
 Candace Havens, Chief Planner 

Cc: Michael Kruse, Director, Department of Planning and Development
 Terrence Morris, attorney for Herrick Road Realty Trust
 Ouida Young, Associate City Solicitor

RE: Request to construct a mixed-use building

Applicant: Herrick Road Realty Trust	
Site: 39 Herrick Road	SBL: Section 61, Block 35, Lots 6&7
Zoning: BU-1	Lot Area: 11,638 square feet (lot 7) ¹
Current use: Parking lot	Proposed use: Mixed-use building

Background:

The subject property consists of an 11,638 square foot lot currently improved with a parking lot used by the tenants and guests of the adjacent apartment building (the parking lot and the apartment building are in common ownership). The property owner is proposing to develop the site with a three-story mixed-use commercial building. The first floor of the building will be a 75-seat restaurant. The upper two stories will have a total of four housing units. The following review is based on plans and materials submitted to date as referenced under Plans and Materials Submitted below.

Administrative determinations:

1. The proposed development includes a 75-seat restaurant on the first floor. A restaurant with greater than 50 seats is allowed in the BU-1 zone with a special permit from the Board of Aldermen per Section 30-11(d)(9).
2. The second and third floors of the proposed building will contain a total of four dwelling units. A multi-family dwelling is allowed in the BU-1 zone with a special permit from the Board of Aldermen per Section 30-11(d)(8).

¹ This figure is from the City's Assessor's database. The applicant claims the lot contains 12,979 square feet. The discrepancy will be discussed later in this memo.

3. The proposed development must comply with the dimensional standards of Section 30-15, Tables 1 and 3 for the BU-1 zone (see chart below).

BU-1 Zone	Required/Allowed	Proposed
Lot size	10,000 sq. ft.	11,638 sq. ft.
Lot size per unit	1,200	2,909.5 sq. ft.
Frontage	80 feet	27.55 feet along Herrick Rd, 130.88 feet along the public footway
Setbacks <ul style="list-style-type: none"> • Front • Side • Rear 	Average ½ building height 0 feet	0 feet 18 feet 9.5 feet
FAR	1.0	0.97
Building Height	24 feet (by right) 36 feet (special permit)	30.19 feet
Maximum Stories	2 (by right) 3 (special permit)	3

4. The subject property has only 27.55 feet of frontage along Herrick Road where 80 feet is required. Section 30-15(b)(2) allows frontage to be measured along a public footway with a special permit from the Board of Aldermen. This lot has adequate frontage along a public footway (130.88 feet) to meet the requirement if a special permit is obtained.
5. The subject lot contains 11,638 square feet according to the City's Assessor's Database. The applicants claim that the property size is 12,979 square feet. The size of the property is not an issue with respect to the dimensional controls for minimum lot size, lot area per unit, or FAR. The site complies with these requirements regardless of the figure used. However, the discrepancy is important with respect to the front setback.

In 1951, the Board of Aldermen approved Board Order #99149 to take 1,342 square feet from Lot 7 (as it was constituted at the time) for a public footway. The applicants claim that this taking was actually only an easement and that the owner retained underlying ownership of the land. The City disagrees. The plan in the City's Engineering Department dated October 16, 1950 and signed by Albert A. Morse, acting City Engineer shows the land was taken for municipal purposes (a parking area and public footway). Sometime after the taking the City Assessor reduced the parcel size to account for the square footage within the footway and the owners' tax assessment has been based on this smaller lot since that time. The deed for the property was not changed.

At issue for the current development project is whether the front setback is measured from the northern boundary of the footway or the southern boundary. The submitted plans show the building constructed immediately on the northern boundary, using the ten-foot-wide footway as the required ten-foot setback. The applicants believe it to be their land and therefore argue that they can use it to satisfy the setback requirement. The City contends that the land within the footway is public land, rather than part of the development parcel. Therefore, the applicants must either move the building ten feet to the north to comply with the required setback or apply to the Zoning Board of Appeals for a variance with respect to the front setback.

6. The proposed development will be 30.19 feet in height and three stories. These dimensions are allowed with approval of a special permit from the Board of Aldermen under Section 30-15, Table 3.
7. Lot 7 is currently used as a parking lot for the tenants and guests of the adjacent apartment building (Lot 6). There are 18 existing parking spaces. The apartment building has no on-site parking. Since the building was constructed well before parking standards were enacted in Newton, it is legally nonconforming with respect to parking. However, in 1998 the owners of the apartment building entered into a license agreement with the City of Newton (Agreement #L-3540) to allow access and egress through the City-owned Cypress Street parking lot to the parking lot on Lot 7.

The License Agreement specifically defines the Licensee as "the owner of two parcels of land...said parcels being numbered by the Newton Assessor as parcels #61-35-6 and 61-35-7 [the two parcels included in this current application]." The License Agreement continues by stating "Licensee wishes to develop parking spaces on parcel #61-35-7 and has requested a right of access and egress for its tenants and guests through the Cypress Street parking lot." A Law Department memo from Gayle A. Smalley, Associate City Solicitor dated November 6, 2001 reiterates the intent of the License Agreement to provide parking for the apartment building.

Although no parking is required for the apartment building, once parking has been provided (as was done in 1998) making the situation less nonconforming, it cannot be removed without zoning relief. In order to remove the existing parking on Lot 7 and redevelop the site, the record owner of Lot 6 must obtain a special permit from the Board of Aldermen to waive 18 parking spaces required for the use on Lot 6.

8. Section 30-19(d) lays out the parking requirements for each of the proposed uses on the site. The proposed uses require 34 parking spaces (see chart below). The proposed site plan depicts parking for 25 spaces (20 in an underground garage and five surface parking spaces). Therefore, the applicants must obtain a waiver from the Board of Aldermen for nine (34-25=9) parking spaces under Section 30-19(m).

Category of Use	Requirement per 30-19(d)	Proposed Use	Required Number of Parking Spaces
Restaurant	1 space/3 seats and 1 space/3 employees	75 seats and 12 employees	29 (25+4)
Dwellings	2 spaces/dwelling unit or 1.25 spaces/dwelling unit with special permit	4 units	5 (assuming a special permit is obtained)
TOTAL			34

9. Section 30-19(d)(2) generally requires two parking spaces per dwelling unit. In apartment buildings, the number of required parking spaces may be reduced to 1¼ spaces per unit with approval of a special permit from the Board of Aldermen.
10. Section 30-19(f)(1) requires that off-street parking facilities be provided on the same lot as the use served. Access driveways are considered part of a parking facility. Both the driveways shown on the submitted plan, leading to the surface and garage parking lots, are partially on

adjoining lots. The driveway for the surface parking lot is located on Lot 6. These two lots have been represented to be in common ownership and if this should ever change an easement must be provided to allow the driveway encroachment.

The proposed driveway leading to the underground parking garage begins at Herrick Road and travels over Lot 6 before passing underground on City-owned property (the Health Department). Again, an easement to traverse Lot 6 will be needed with any change in ownership. However, an underground easement must also be obtained from the Board of Aldermen through the Real Property Reuse Committee in order to connect the driveway on Lot 6 to the garage on Lot 7. The project proponents have started this process. In April 2009, the Board of Aldermen, under Section 2-7, authorized the Mayor to negotiate a lease for the subsurface easement. The City is now awaiting an appraisal of the property to continue the process.

To locate the driveways on these adjacent lots, the proponents must obtain a special permit from the Board of Aldermen under Section 30-19(f)(2).

11. All of the parking spaces on a lot are considered when determining whether the parking facility must meet the design standards of a facility containing five stalls or less (Section 30-19(g)) or more than five stalls (Section 30-19(h)). For this project, there are two parking areas that provide a total of 25 on-site parking spaces. Therefore, the provisions of Section 30-19(h) apply. Section 30-19(h)(4)(a) dictates that the driveway be a minimum of 12 feet for one-way traffic or 20 feet for two-way traffic. The plans submitted appear to show a two-way, 12-foot driveway. In this case, the developer must obtain a special permit under Section 30-19(m).
12. Section 30-19(h)(3) requires a 20-foot wide driveway. Due to a pinch point between the apartment building and the lot line, the driveway shown on the northwest side of Lot 6 is only 13.6 feet wide. The applicant must obtain a special permit from the Board of Aldermen under Section 30-19(m) in order to construct the driveway as proposed.
13. In order to construct the access driveway to the garage, an eight-foot retaining wall is necessary in the rear and side setback of Lot 6. Section 30-5(b)(4) requires a special permit from the Board of Aldermen for a retaining wall of greater than four feet in any setback.
14. Section 30-19(k) requires parking for one bicycle for each ten spaces in a parking facility containing 20 or more stalls. The developer should either locate three bicycle spaces on-site or obtain a special permit from the Board of Aldermen under Section 30-19(m) to waive this provision.
15. The proposed development is subject to the Inclusionary Zoning provisions of Section 30-24(f). For developments of six housing units or less, a cash payment in lieu of providing affordable units is permitted. The applicants have indicated that they will opt to make the required payment.

Zoning Relief Summary		
Ordinance	Lot 7	Action Required
	Building	
§30-15, Table 3	Allow height to exceed 24 feet	SP per §30-24
§30-15, Table 3	Allow three story building	SP per §30-24
§30-15, Table 3	Reduce front setback requirement	Variance from ZBA
	Use	
§30-11(d)(9)	Allow restaurant with greater than 50 seats	SP per §30-24
§30-11(d)(8)	Allow multi-family dwelling	SP per §30-24
	Parking	
§30-19(d)(2)	Allow 1¼ parking spaces per housing unit	SP per §30-24
§30-19(d), §30-19(m)	Waive nine required parking spaces	SP per §30-24
§30-19(k), §30-19(m)	Waive three required bicycle parking spaces	SP per §30-24
§30-19(f)(1)&(2)	Allow off-street parking facilities to be located on a separate lot	SP per §30-24
	Site	
§30-15(b)(2)	Allow frontage to be measured along the public footway	SP per §30-24
§30-15 Table 3	Site Plan Approval required	Site Plan Approval per §30-23
Zoning Relief Summary		
Ordinance	Lot 6	Action Required
	Site	
§30-5(b)(4), Ordinance Z-45	Construct an 8-foot retaining wall within the rear and side setback	SP per §30-24
§30-19(m)	Waive 18 existing parking spaces located on Lot 7 associated with the use on Lot 6	SP per §30-24

Plans and materials reviewed:

- Quitclaim Deed from Newton-Waltham Bank and Trust Company to Harold Tingley, Trustee of the Longacre Trust, recorded on August 2, 1951 at the Middlesex South Registry of Deeds in Book 7780 at Page 76.
- Quitclaim Deed from Thomas W. Pryor and Elliott Tingley, Trustees of the Longacre Trust II to the Trustees of the Herrick Road Realty Trust, recorded on 1/10/97 at the Middlesex South Registry of Deeds in Book 26980 at Page 377.
- Plan set titled "Herrick Road Residences, 17-31 Herrick Road, Newton, MA", dated June 14, 2008 (rev. 11/07/08), prepared by Khalsa Design, Inc., Architect, 17 Ivaloo St., Suite 400, Somerville, MA, 02143, Jai Singh Khalsa, Registered Architect, consisting of the following:
 - Sheet A1 – Architectural Site Plan
 - Sheet A2 – Floor plans, Elevations & Perspective View
 - Sheet A-3 – Landscape Plan
 - Sheet A-4 – Architectural Site Section
- Plan set, prepared by VTP Associates, Inc., PLS, Land Surveyors – Civil Engineers, 132 Adams Street, Newton, MA 02458, stamped and signed James J Abely, Registered Civil Engineer, consisting of the following:
 - Topographic Site Plan - Newton, Massachusetts Showing Conditions At Lot B Herrick Road," dated December 11, 2001, rev. 1/10/02

- Topographic Site Plan – Newton, Massachusetts Showing Proposed Conditions At Herrick Road, dated November 12, 2008
 - Detail Sheet (2), dated November 3, 2008
 - Detail Sheet (3), dated November 3, 2008
 - Cross-section, dated November 3, 2008
 - Area Plan of Land at Herrick Road, dated November 4, 2008
- License Agreement Relative to Access Through City's Cypress Street Parking Lot, executed 7/11/98.
 - Aldermanic Board Order #71-09(2) dated April 6, 2009 regarding sub-surface easement under city-owned land.
 - Memorandum to John Lojek dated May 2, 2009 regarding ownership of the public footway.
 - Aldermanic Board Order #99148 dated May 7, 1951 regarding taking of an easement over subject premises.
 - Letter to John Lojek dated June 23, 2009 regarding determination of lot size.
 - "City of Newton, Massachusetts, Private Land, Land Taken for Municipal Purposes, (Parking Area), Public Footway, Plan & Profile Showing Laying Out, Grade & Acceptance" dated Oct. 16, 1950, signed by Albert A. Morse, Acting City Engineer

CITY OF NEWTON
ENGINEERING DIVISION

MEMORANDUM

To: Alderman George Mansfield, Land Use Committee Chairman

From: John Daghlion, Associate City Engineer

Re: Special Permit – Herrick Road Proposed 2-1/2 Story Building

Date: October 15, 2009

CC: Thomas Daley, PE Commissioner DPW (via email)
David Turocy, Deputy Commissioner DPW (via email)
Lou Taverna, PE City Engineer (via email)
Candice Havens, Chief Planner (via email)
Linda Finucane, Associate City Clerk (via email)
Eve Tapper, Chief Zoning Officer, (via email)
Alexandra Ananth, Planner (via email)

In reference to the above site, I have the following comments for a plan entitled:

*Topographic Site Plan
Showing Proposed conditions at
Herrick Road
Newton, MA
Prepared by: VTP Associates, Inc.
Dated: November 12, 2008*

Herrick Road is scheduled to be paved this construction season, the applicant must contact the Commissioner of Public Works immediately to determine the impact of the utility extensions (water and sanitary sewer mains) that are proposed from Herrick Road to the proposed development.

Access:

1. The proposed driveway off Herrick Road may be problematic due to the exiting metered parking stalls along the westerly side of the street. The last stall appears to extend 4-feet beyond the proposed driveway apron; this is based on rough

measurement taken during a site visit today. The engineer of record should locate the existing stalls in relation to the proposed driveway apron for clarification onto the site plan. If the proposed driveway is one-way into the site rather than two-way, the issue sight distance with vehicles exiting the site and vehicles parked in these stalls will be negated.

2. The site plan and architectural plans do not show the existing power plant building that provides steam for the apartment building at #17 Herrick Road. The proposed alignment of the driveway off Herrick Road will go through this two story brick structure, and connect to the proposed underground parking garage; this needs to be addressed. Furthermore the width of the driveway nearest the existing apartment building is only 13.6 feet is too narrow for two way traffic; a traffic signal will have to be installed at this pinch point that will be activated to control the flow of traffic entering and exiting the underground garage and access to Herrick Road, otherwise there is a potential for many accidents since the existing apartment building (#17 Herrick Rd.) will prevent clear line of sight along with the narrowness of the driveway.
3. The proposed driveway that is juxtaposed to the municipal parking lot is labeled "Emergency Access" and is detonated with a dashed line along its width, will access for non emergency vehicle be restricted, and what is the surface of this emergency access driveway. If this is only for emergency vehicle to enter, how do vehicles that enter from Herrick Road exit the site as the proposed driveway located on the easterly property line is too narrow for two way traffic.
4. The proposed driveway ramp to the underground parking garage will traverse a portion of the City owned property at #1294 Centre Street (Health Department Building) this will require a License Agreement with the City.
5. Details of the proposed retaining walls are needed. Any wall greater than 4 –feet shall have a non-climbable safety fence installed on top of the wall. Details of the fence will be needed.
6. A turning template plan for Emergency Response vehicles will be required for this proposal.
7. According to the City records the existing public pedestrian footpath is 10-feet wide, however between the chain link fence of the MBTA and the chain link along this property the pathway varies between 3' – 5'. According to the architectural plans the front entrance of the building will be directly connected to this pathway, accordingly the pathway should be widened to the maximum extent and reconstructed with cement concrete as a public benefit. This footpath shall remain open during construction.

8. The engineer of record will need to make provision to properly shore and brace the footpath during construction to ensure that the public can safely use the pathway while the foundation for the proposed building is being excavated.

Drainage:

1. The drainage analysis methodology is acceptable however; there is a mathematical error that must be corrected.
2. An on site soil evaluation needs to be performed to obtain the seasonal high groundwater elevation, percolation rate in accordance to Title V. This information must be submitted with the building permit application. The locations of these tests need to be shown on the site plan.
3. An Operations and Maintenance (O&M) plan for Stormwater Management Facilities needs to be drafted and submitted for review. Once approved the O&M must be adopted by applicant, incorporated into the deeds; and recorded at the Middlesex Registry of Deeds. A copy of the recording instrument shall be submitted to the Engineering Division.
4. It is imperative to note that the ownership, operation, and maintenance of the proposed drainage system and all appurtenances including but not limited to the drywells, catch basins, and pipes are the sole responsibility of the Homeowners Association.

Environmental:

1. Has a 21E investigation & report been performed on the site, if so copies of the report should be submitted to the Newton Board of Health and the Engineering Division.
2. Are there any existing underground oil or fuel tanks, are they to be removed, if they have been evidence should be submitted to the Newton Fire Department, and Newton Board of Health.
3. How will trash & recycling be addressed for the site, according to the site & architectural plans there is no on site dumpsters designated.

Water & Sewer:

1. **During the last two weeks the Highway Division has constructed new sidewalks and curbing along the intersection of Herrick Road and Union Street (specifically in front of the apartment building at #17 Herrick Road) which may effect the proposed alignment of the proposed water main and sanitary sewer main; the engineer of record will have to submit updated topography plans.**
2. In 2003 the applicant obtained permission from the Board of Aldermen to extend both the water main and sanitary sewer mains within Herrick Road; however neither utility has been installed to date. The applicant should check with the Clerk of the Public Facilities to ensure that the approval for the extensions has not expired.
3. The proposed 1" water service for fire protection is in adequate, calculation are needed to properly size this service connection.
4. The proposed 1" domestic water service is inadequate for this size building and its intended use.
5. Fire flow testing is required for the proposed fire suppression system. The applicant must coordinate this test with both the Newton Fire Department and the Utilities Division; representatives of each department shall witness the testing, test results shall be submitted in a write report. Hydraulic calculation shall be submitted to the Newton Fire Department for approval.
6. The developer shall connect the proposed water main extension off Herrick Road through the property and connect to the existing main in the municipal parking lot, creating a looped system. This will be a public benefit which would improve water quality and reinforce the water pressure.
7. A detailed profile is needed which shows the existing water main, proposed water service(s), sewer main and proposed sewer service(s) with the slopes and inverts labeled to ensure that there are no conflicts between the sewer services and the water service. The minimum slope for a service is 2.0%, with a maximum of 10%. Pipe material shall be 6" diameter SDR 35 PVC pipe within 10' of the dwelling then 4" pipe per Massachusetts State Plumbing Code. In order to verify the slopes and inverts of the proposed service connection, two manholes of the existing sanitary sewer system need to be identified on the plan with rim & invert elevations. The crown of the service connection & the sewer man need to match.

8. The sanitary sewer service will need a grease trap for the restaurant prior to the final connection of the main.
9. All utility trenches with the right of way shall be backfilled with Control Density Fill (CDF) excavatable Type I-E; detail is available in the City of Newton Construction Standards Detail Book.

General:

1. As of January 1, 2009, all trench excavation contractors shall comply with Massachusetts General Laws Chapter 82A, Trench Excavation Safety Requirements, to protect the general public from unauthorized access to unattended trenches. Trench Excavation Permit required. This applies to all trenches on public and private property. *This note shall be incorporated onto the plans.*
2. No excavation is allowed within any City right-of-way between November 15th and April 15th. If an emergency exists or there are extenuating circumstances, the applicant may seek permission for such work from the DPW Commissioner via the City Engineer. If permission is granted, special construction standards will be applied. Applicant or Applicant's representative must contact the City of Newton Engineering Department prior to start of work for clarification.
3. All tree removal shall comply with the City's Tree Ordinance.
4. The contractor is responsible for contacting the Engineering Division and scheduling an appointment 48 hours prior to the date when the utilities will be made available for an inspection of water services, sewer service, and drainage system installation. The utility is question shall be fully exposed for the inspector to view; backfilling shall only take place when the City's Inspector has given their approval. *This note should be incorporated onto the plans*
5. The applicant will have to apply for Street Opening, Sidewalk Crossing, and Utilities Connecting permits with the Department of Public Works prior to any construction. *This note must be incorporated onto the site plan.*
6. How will mail be distribute for the residential units, will there be a bank of mail boxes in the lobby or located within the site?
7. The applicant will have to apply for a Building Permits with the Department of Inspectional Service prior to any construction.
8. Prior to Occupancy permit being issued, an As-Built Plan shall be submitted to the Engineering Division in both digital format and in hard copy. The plan should

show all utilities and final grades, any easements and final grading. *This note must be incorporated onto the site plan.*

9. If a Certificate of Occupancy is requested prior to all site work being completed, the applicant will be required to post a Certified Bank Check in the amount to cover the remaining work. The City Engineer shall determine the value of the uncompleted work. *This note must be incorporated onto the site plan.*

Note: If the plans are updated it is the responsibility of the Applicant to provide all City Departments [Conservation Commission, ISD, and Engineering] involved in the permitting and approval process with complete and consistent plans.

If you have any questions or concerns please feel free to contact me @ 617-796-1023.

ATTACHMENT C

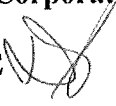
Design Consultants, Inc.

265 Medford Street
Somerville, MA 02143
(617) 776-3350

MEMORANDUM

DCI JOB NO. 2009-036.00

TO: Stuart Rothman
First Cambridge Realty Corporation

FROM: David Ivany, P.E., PTOE 
DCI

SUBJECT: 17-31 Herrick Road, Newton
Parking Lot Survey

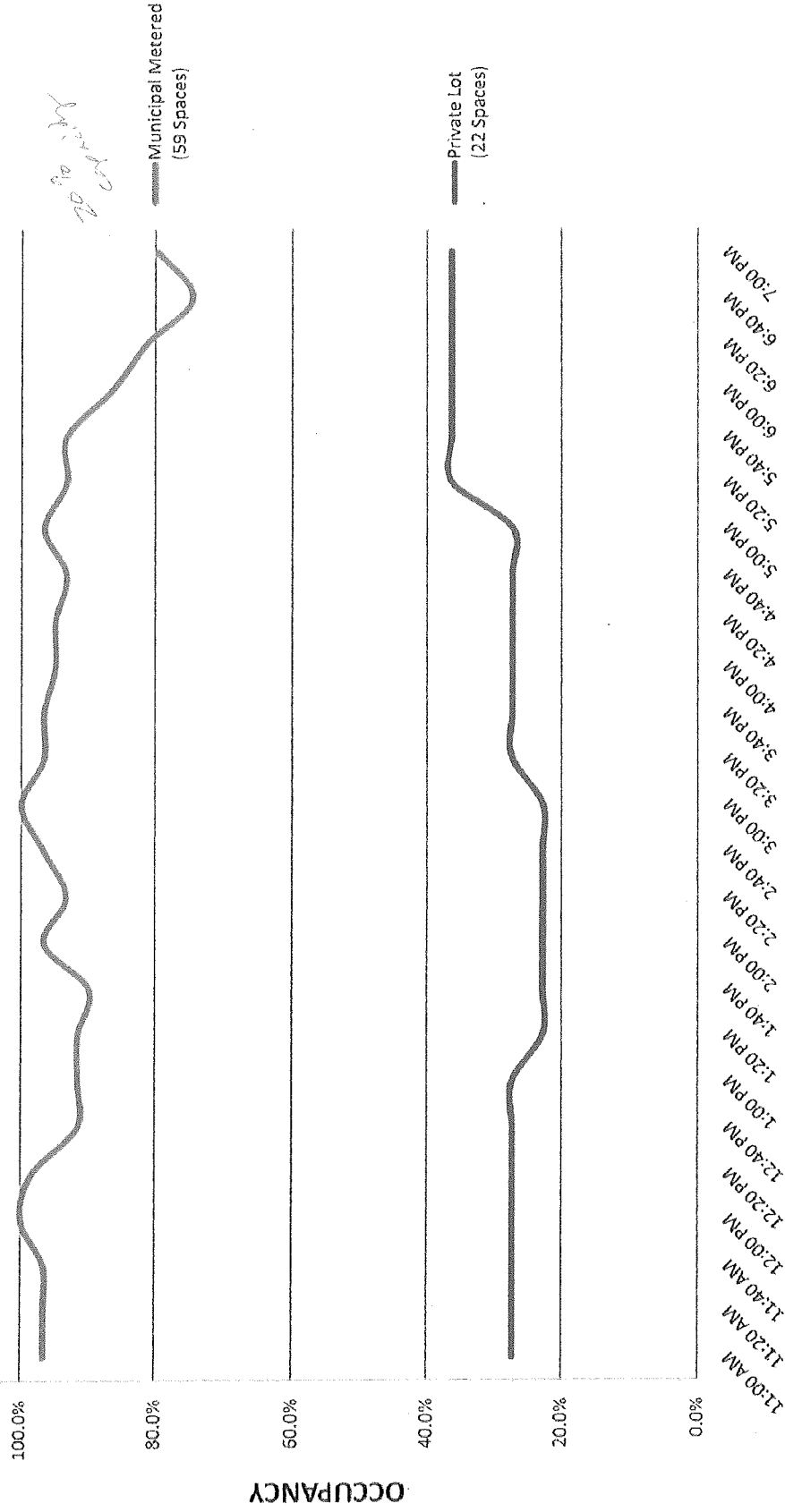
DATE: October 13, 2009

We have completed our parking utilization survey of your private lot and adjacent Municipal lot at the above-noted address. Surveys were undertaken on Thursday, October 8, 2009 and on Saturday, October 10, 2009. Both activities covered the time period from 11:00 AM to 7:00 PM.

The results are provided on the attached documents. Figures 1 and 2 show the occupancy of the two lots for the weekday and weekend period respectively. Figure 3 illustrates the average duration of parking for each lot during each survey period.

If there are any questions or additional information required, please don't hesitate to call me at 617-776-3350.

WEEKDAY PARKING OCCUPANCY



PARKING LOT SURVEY WAS DONE ON 10/15/09 FROM THE HOURS OF 11AM TO 7PM

Design Consultants, Inc.

Consulting Engineers and Surveyors

DESIGN CONSULTANTS BUILDING

265 MEDFORD STREET

SOMERVILLE, MA 02143

(617) 776-3350

FIRST CAMBRIDGE REALTY CORP.

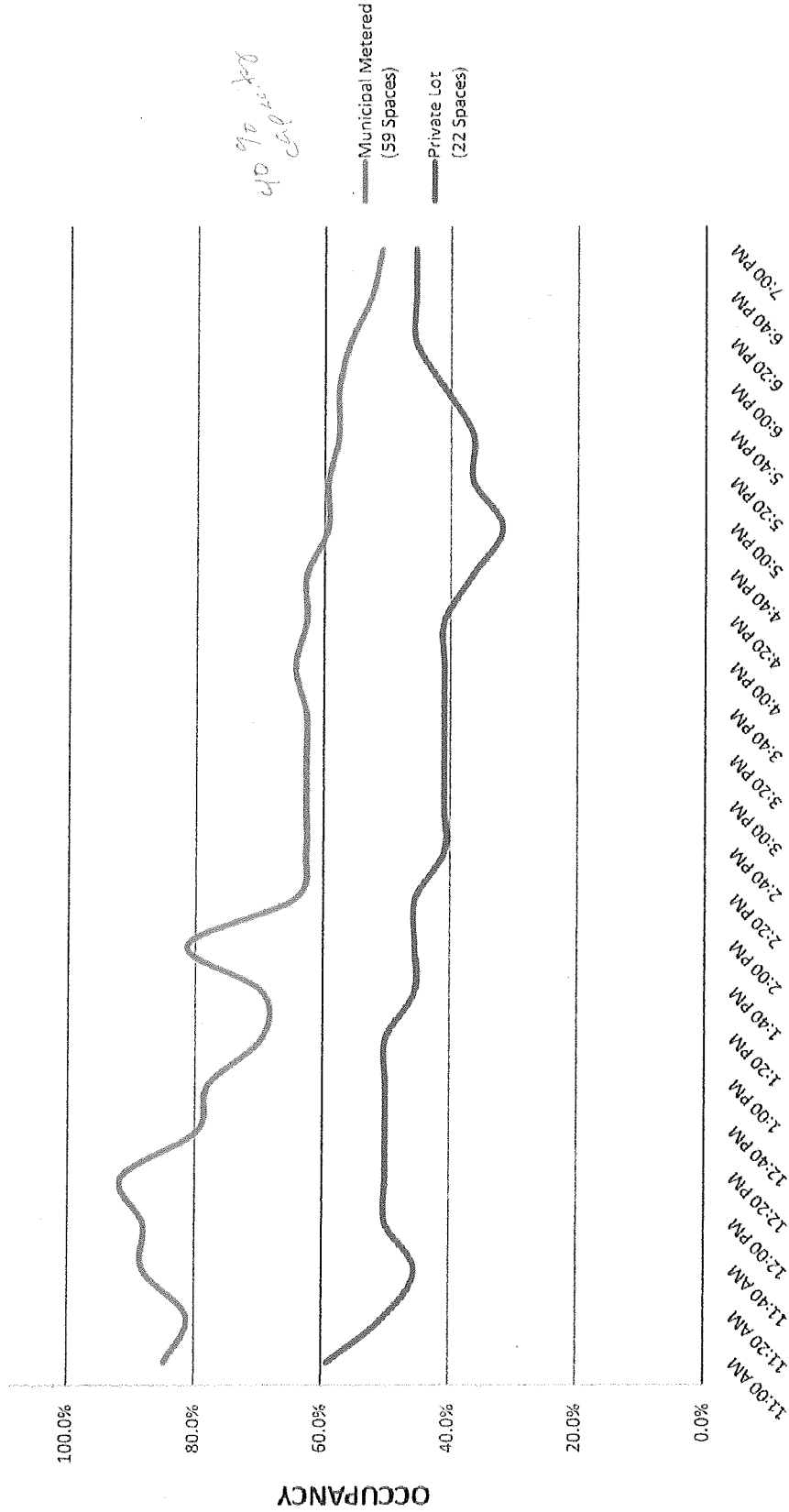
NEWTON, MA

17-31 HERRICK ROAD

PARKING STUDY

FIGURE 1

WEEKEND PARKING OCCUPANCY



PARKING LOT SURVEY WAS DONE ON 10/17/09 FROM THE HOURS OF 11AM TO 7PM

Design Consultants, Inc.

Consulting Engineers and Surveyors

DESIGN CONSULTANTS BUILDING

265 MEDFORD STREET

SOMERVILLE, MA 02143

(617) 776-3350

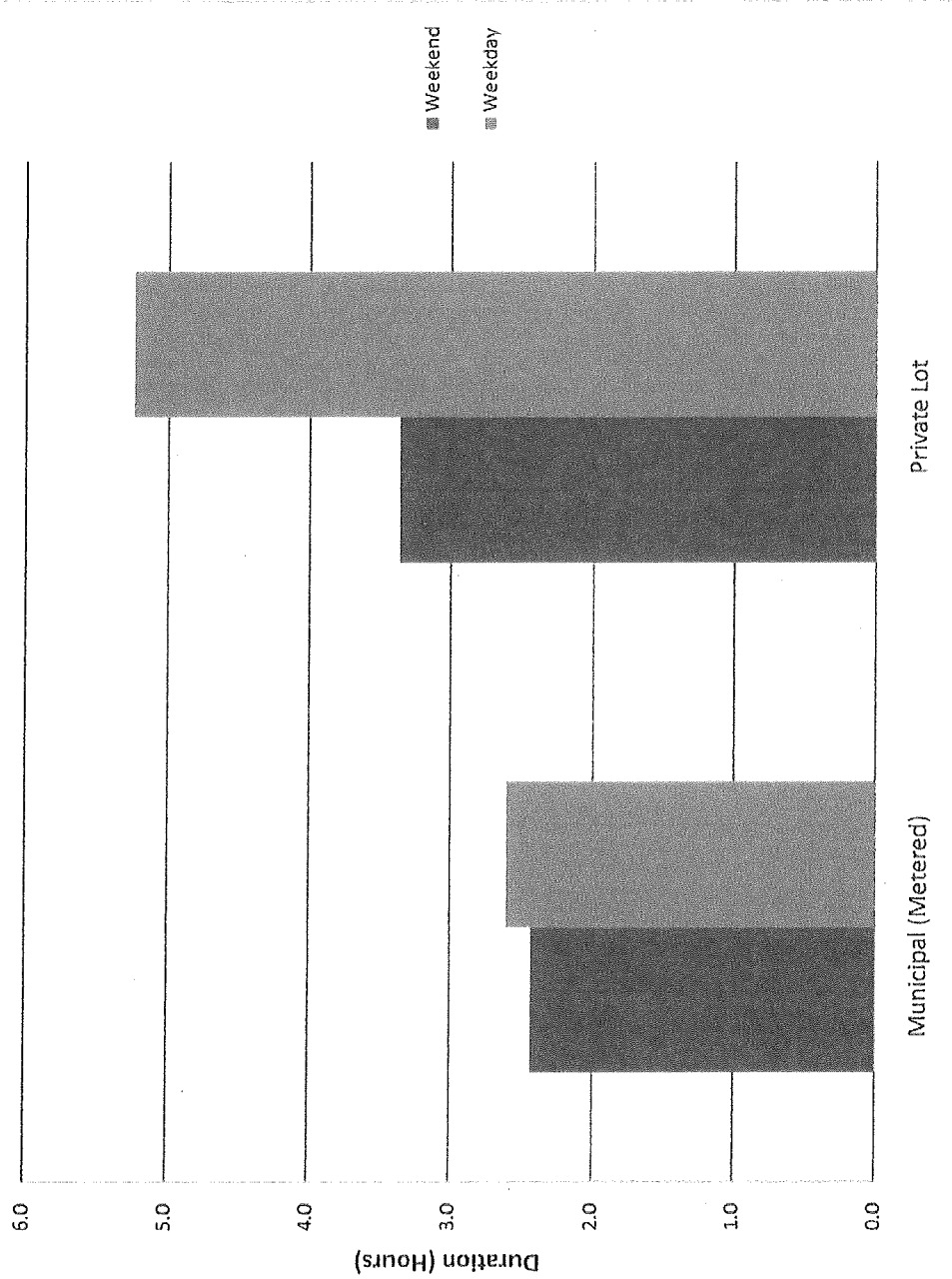


FIRST CAMBRIDGE REALTY CORP.
NEWTON, MA

17-31 HERRICK ROAD
PARKING STUDY

FIGURE 2

Parking Duration



PARKING LOT SURVEY WAS DONE ON BOTH 10/15/09 AND 10/17/09 FROM THE HOURS OF 11AM TO 7PM

Design Consultants, Inc.

Consulting Engineers and Surveyors

DESIGN CONSULTANTS BUILDING
265 MEDFORD STREET
SOMERVILLE, MA 02143
(617) 776-3350

[Signature]

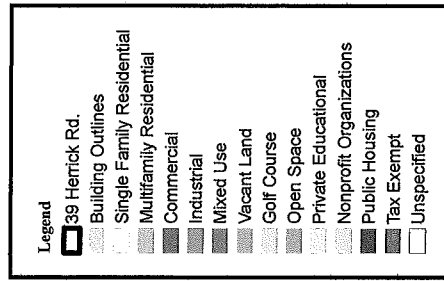
FIRST CAMBRIDGE REALTY CORP.
NEWTON, MA

17-31 HERRICK ROAD
PARKING STUDY

FIGURE 3

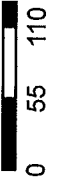
Land Use Map

39 Herrick Rd.

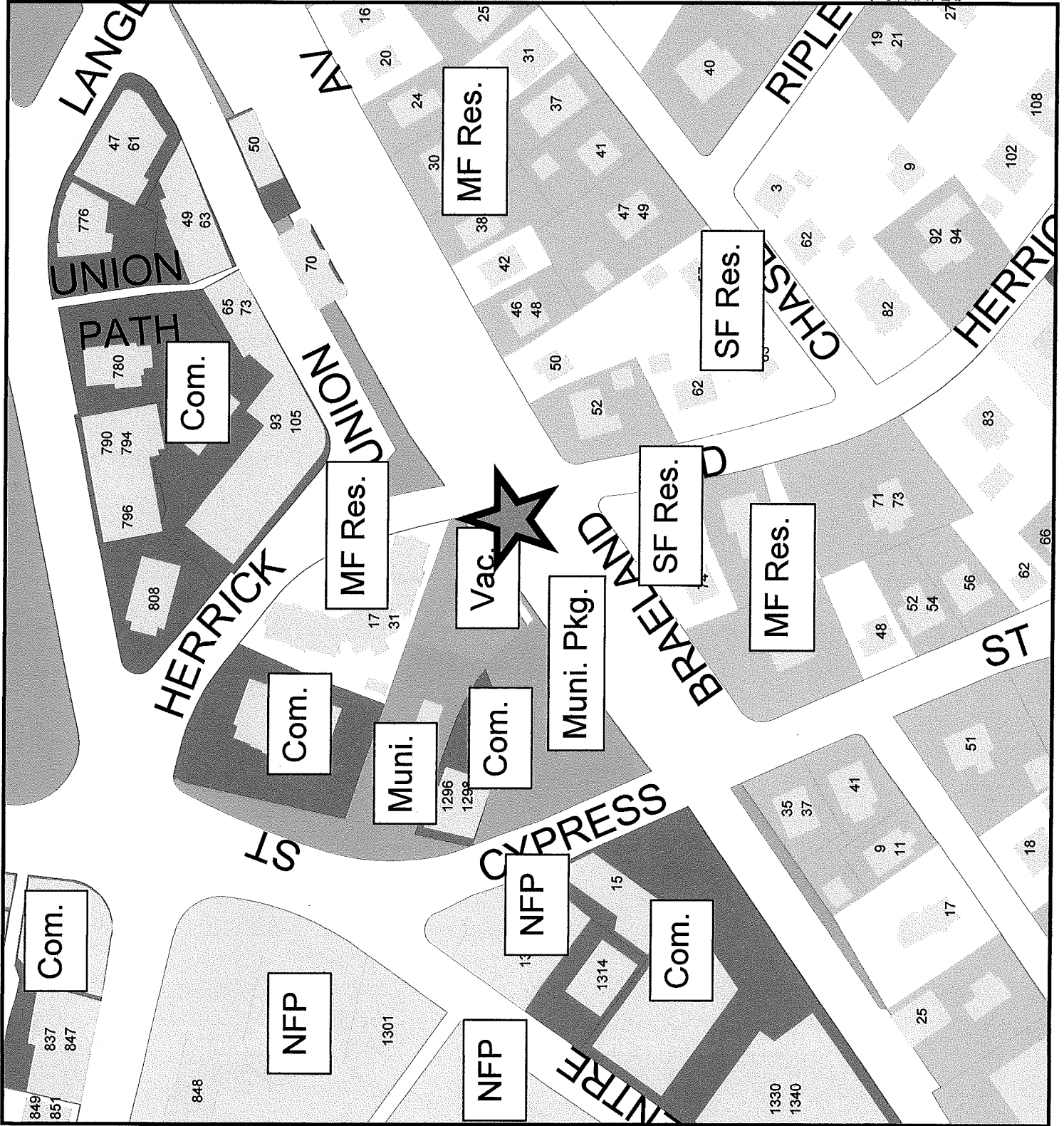


ATTACHMENT D

The information on this map is derived from the City of Newton Geographic Information System. The City of Newton cannot guarantee the accuracy of the information. Each user of the information is responsible for determining its suitability for their purpose. City departments may use this information to approve applications based on the information shown on this map.



MAP DATE: October 2004



Zoning Map

39 Herrick Rd.

Legend	
	39 Herrick Rd.
	Building Outlines
	Single Res. 1
	Single Res. 2
	Single Res. 3
	Business 1
	Business 2
	Business 4
	Business 5
	Limited Manufacturing
	Manufacturing
	Multi-Res. 1
	Multi-Res. 2
	Multi-Res. 3
	Multi-Res. 4
	Mixed Use 1
	Mixed Use 2
	OS/Rec.
	Public Use



ATTACHMENT E

The information on this map is for informational purposes only. The City of Newton cannot guarantee the accuracy of the information. Each user of this map is responsible for determining its suitability for their purpose. City departments may not approve applications based on this map.



MAP DATE: October

